

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36312

STATE OF IDAHO,	)	2009 Unpublished Opinion No. 689
	)	
Plaintiff-Respondent,	)	Filed: November 24, 2009
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
MICK JAMES LINDSAY,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

---

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Gooding County. Hon. R. Barry Wood, District Judge.

Judgment of conviction and unified sentence of ten years, with five years determinate, for injury to a child, affirmed; order relinquishing jurisdiction, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Stephen D. Thompson, Ketchum, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

---

Before GUTIERREZ, Judge, GRATTON, Judge  
and MELANSON, Judge

---

PER CURIAM

Mick James Lindsay was charged with injury to a child and aggravated battery for severe injuries he inflicted on a two-month-old baby. Pursuant to a plea agreement, Lindsay pled guilty to injury to a child, Idaho Code, § 18-1501(1), and the state agreed to dismiss the aggravated battery charge. The district court sentenced Lindsay to a unified term of ten years, with five years determinate and retained jurisdiction. After Lindsay completed his rider, the district court relinquished jurisdiction. Lindsay filed an Idaho Criminal Rule 35 motion for reduction of sentence, which the district court denied. Lindsay appeals from his judgment of conviction and from relinquishment of jurisdiction, contending that the district court abused its discretion by

imposing an excessive sentence and by relinquishing jurisdiction. He also appeals from the denial of his Rule 35 motion.

Sentencing is a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of a sentence are well established and need not be repeated here. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *Toohill*, 103 Idaho at 568, 650 P.2d at 710.

The decision as to whether to place a defendant on probation or, instead, to relinquish jurisdiction is committed to the discretion of the sentencing court. *State v. Hernandez*, 122 Idaho 227, 230, 832 P.2d 1162, 1165 (Ct. App. 1992); *State v. Lee*, 117 Idaho 203, 786 P.2d 594 (Ct. App. 1990); *State v. Toohill*, 103 Idaho 565, 567, 650 P.2d 707, 709 (Ct. App. 1982). Therefore, a decision to relinquish jurisdiction will not be disturbed on appeal except for an abuse of discretion. *State v. Chapman*, 120 Idaho 466, 816 P.2d 1023 (Ct. App. 1991).

A Rule 35 motion is a request for leniency which is addressed to the sound discretion of the sentencing court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007).

Applying the foregoing standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion in imposing sentence, relinquishing jurisdiction or in denying Lindsay's Rule 35 motion. Therefore, the judgment of conviction and order relinquishing jurisdiction directing execution of Lindsay's previously suspended sentence are affirmed, as is the denial of his Rule 35 motion for reduction of sentence.